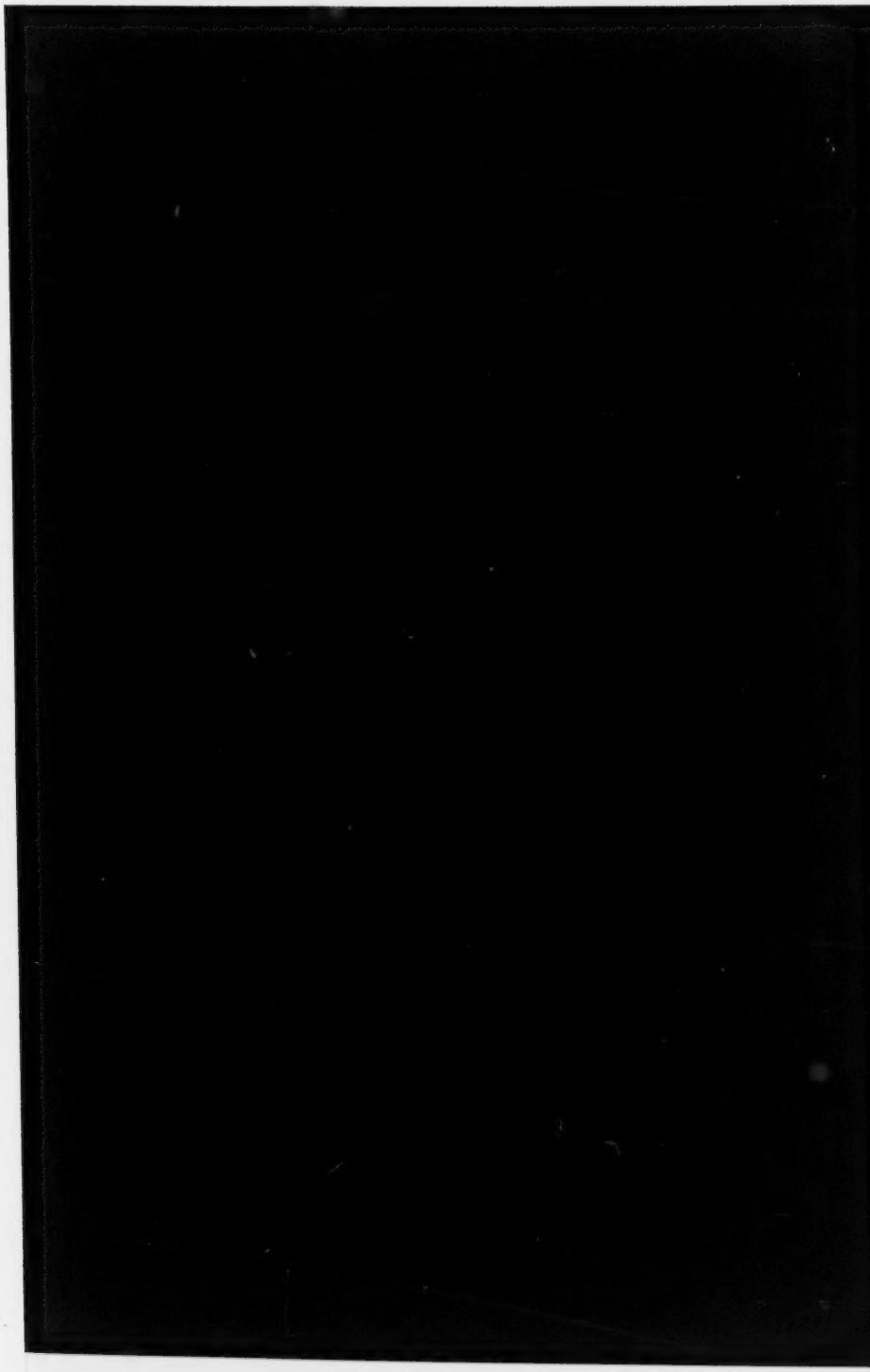

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 902

PEOPLE OF PUERTO RICO, PETITIONER

v.

UNITED STATES OF AMERICA AND CASINO DE PUERTO RICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 23–26) is not officially reported. The opinions in the circuit court of appeals (R. 46–50) are reported in 132 F. 2d 220.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered December 18, 1942 (R. 50). An order denying the petition of the People of Puerto Rico for a rehearing was entered January 11, 1943 (R. 51). The petition for a writ of certiorari was filed April 9, 1943.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, when the United States acquires the fee simple title to property by condemning the base fee and the possibility of reverter, the holder of the latter has a compensable interest.

2. Whether the interest of the People of Puerto Rico in the property condemned constituted an interest of greater dignity than a possibility of reverter.

STATUTES INVOLVED

The pertinent parts of Act No. 69 of the Puerto Rican Legislature, approved September 3, 1910 (Laws of 1910, Special Session, pp. 25–28); Act No. 2 of the Puerto Rican Legislature, approved February 21, 1912 (Laws of 1912, pp. 38–39); Joint Resolution No. 27 of the Puerto Rican Legislature, approved April 20, 1936 (Laws of 1936, pp. 1194–1198); and Section 89, Code of Civil Procedure of Puerto Rico (1933), are set out in the Appendix, *infra,* pp. 15–23.

STATEMENT

On December 4, 1941, at the request of the Secretary of War, the United States filed its petition to condemn, in fee simple, a tract of land with a casino thereon, in order to provide recreational facilities for the armed forces of the United

States and for persons employed in national defense industries in San Juan, Puerto Rico (R. 1–8). At the same time the Government filed a declaration of taking pursuant to the Declaration of Taking Act, approved February 26, 1931, c. 307, 46 Stat. 1421 (40 U. S. C. 258a), and deposited $125,000.00 in court as estimated just compensation (R. 40–44). The court that day entered a judgment on the declaration of taking which recited that title to the property had vested in the United States upon the filing of the declaration and deposit of estimated just compensation (R. 10–12).

The property condemned was originally part of a larger tract which the Casino de Puerto Rico had purchased from the People of Puerto Rico on October 1, 1913, for $1.00 and "other consideration." Laws of Puerto Rico (1910), Special Session, pp. 25–28 (App. 15–16). From 1913 to 1936 the Casino held a fee simple title to the entire tract and had erected a building thereon which cost not less than $60,000.00.[1] Sometime prior to 1936 the Casino borrowed $40,000.00 from the Banco Territorial y Agricola for the purpose of constructing a reinforced concrete building to be used for a bowling alley and secured the debt by a mortgage on its property. The loan was par-

[1] The conveying Act, as amended by the Act of February 21, 1912 (App. 16–18), made erection of a building at this minimum figure a condition precedent to retention of title. There is no contention that the terms of this Act were not complied with.

tially repaid by 1936, but by reason of the economic crisis prevailing, the Casino was unable further to reduce the principal debt. The bank which owned the mortgage was, in turn, indebted to the Insular Treasury. A three-cornered transaction was entered into by which the mortgage was cancelled, the mortgage notes were turned over to the Treasurer of Puerto Rico as part payment of the bank's debt, and the bowling-alley building was purchased by the People of Puerto Rico from the Casino for the unpaid balance of the mortgage. The government of Puerto Rico thus acquired "a building which would be of great use to it," and which was to be used "entirely for offices of the Insular Government."[2] The Casino retained the rest of its property, including the main building, subject to the conditions set out in Joint Resolution No. 27, approved April 20, 1936 (Laws of Puerto Rico 1936, pp. 1194–1198) which was the legislative act approving the transaction. Those conditions read:

> * * * *Provided,* That as a condition of this transaction, the remainder of the lot which was ceded to the Casino de Puerto Rico shall be used only for nonprofit purposes, as a social center and recreation park annexed thereto: *Provided further,* That in case the Casino de Puerto Rico is dissolved, or its activities cease in any way, or the said lot is used for other pur-

[2] Joint Resolution No. 27, approved April 20, 1936 (App. pp. 18–22).

> poses different from those specified in the preceding proviso, such act or acts shall determine the gratuitous reversion of said lot, as well as of all improvements and works constructed thereon, to The People of Puerto Rico: * * *

The People of Puerto Rico, named in the petition of condemnation as an entity who "may claim some interest in the land condemned," (R. 3) were served by summons on December 8, 1941, (R. 35). The People of Puerto Rico not having appeared in the proceeding within the prescribed ten day period,[3] the United States and the Casino on December 23, 1941 entered into a stipulation (R. 17) which provided, *inter alia,* that the $125,000.00 deposited in connection with the declaration of taking was just compensation for the property taken (R.18).[4] On the same day the United States filed a motion seeking the judgment of the district court that the People of Puerto Rico had no compensable interest in the property condemned (R. 15–17). The People of Puerto Rico, on January 15, 1942, filed an "answer" claiming to be entitled to the amount deposited and alleging that sum not to be just compensation for the property taken (R. 21–22). The court in a final judgment entered on January 17.

[3] Section 89, Code of Civil Procedure of Puerto Rico (1933) (App. 22).

[4] The court that day ordered payment to the Casino of the sum deposited (R. 20).

1942, held that the amount stipulated was the fair market value of the property condemned, that the events upon which the reversion of the title to the People of Puerto Rico would happen had not occurred at the time of filing this cause, and that they were not entitled to compensation for the taking (R. 26–29). The circuit court of appeals affirmed (R. 50).[5]

ARGUMENT

While the United States is usually not concerned with the question of the proper distribution or apportionment of the award in a condemnation proceeding,[6] this is more than a dispute between two claimants over an award. The People of Puerto Rico contend that they have a compensable interest in the property condemned, that they are, therefore, not bound by the stipulation between the Casino and the United States as to the value of the property, and that they would be entitled on a retrial to recover additional com-

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[5] The court held the interest of the People of Puerto Rico to be only the right to the land in fee simple if at some indefinite time in the future the Casino should violate any one of the conditions or provisos upon which its right of present occupancy was made to depend. Judge Magruder in a separate opinion stated that he thought the interest to be something more than a possibility of reverter but agreed it could not be valued.

[6] *United States* v. *Dunnington*, 146 U. S. 338, 352–353; *St. Paul* v. *Certain Lands in St. Paul*, 48 F. 2d 805, 807 (C. C. A. 8); see memorandum of the Government in *People of Puerto Rico* v. *United States*, Nos. 714 and 715, this Term.

pensation from the United States. The Government therefore is interested.

1. Joint Resolution No. 27, approved April 20, 1936, was treated by the lower courts as subjecting the fee simple estate of the Casino in the property here involved to a condition subsequent, or as transmuting it into a determinable fee which was to continue until the Casino was dissolved, its activities ceased, or the property was used for purposes other than as a social center and recreation park. Whether the interest of the Casino be viewed as an estate on condition subsequent or an estate subject to special limitation, the rights of the People of Puerto Rico do not constitute a compensable interest in the land, being merely a possibility of reverter. *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.* 47 F. Supp. 603 (D. Mass.); *Lyford* v. *Laconia,* 75 N. H. 220; *Joint School District* v. *Bosch,* 219 Wis. 181; I Tiffany on Real Property (2d ed.), sec. 132; I Simes on Future Interests, sec. 177; see *Magness* v. *Kerr,* 121 Ore. 373; note, 51 A. L. R. 1473.

It is well settled that if the event upon which a possessory estate in fee simple defeasible is to end is an event the occurrence of which within a reasonably short period of time is not probable,

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then the damages for the taking thereof by an eminent domain proceeding are ascertained as though the estate were a possessory estate in fee simple absolute and the entire value thereof is awarded to the owner of the estate in fee simple defeasible. *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.,* 47 F. Supp. 603 (D. Mass.); *United States* v. *1,846.77 Acres of Land, etc.,* 48 F. Supp. 721 (W. D. Ky.); *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 206 N. Y. S. 132; *In re Cooks' Will,* 243 App. Div. 706, 277 N. Y. S. 26, affirmed per curiam 268 N. Y. 560; *Lyford* v. *Laconia,* 75 N. H. 220; *Chandler* v. *Jamaica Pond Aqueduct Corp.,* 125 Mass. 544, 547; Orgel, Valuation under Eminent Domain (1936), sec. 117; I Nichols on Eminent Domain (2d ed.), p. 342; I Restatement of Property, sec. 53. Cf. *United States* v. *2,184.81 Acres of Land,* 45 F. Supp. 681 (W. D. Ark.). There is no contention here that at the time the United States instituted condemnation proceedings there was any likelihood of the Casino being dissolved, or its activities stopping, or the property ceasing to be used for social purposes.

Petitioner, in an effort to avoid the force of these decisions, contends that the filing of the declaration of taking "*eo instanti* operated as a breach of the condition upon which the Casino

had been holding the land" (Pet. 2) and thereby worked "a reverter of the title to The People of Puerto Rico" (Pet. 3), so that "the deposited money which was substituted for the land by the condemnation proceeding * * * belong(s) to the People of Puerto Rico" (Pet. 15–16).

The United States agrees that upon the filing of the declaration of taking the interest of the Casino terminated, but by the same token the interest of the People of Puerto Rico, whatever it may have been, also terminated, and the United States, not the People of Puerto Rico, became the sole owner of the land. By a single act of appropriation the Government seized both the base fee and the interest of the People of Puerto Rico with the result that title to the property never revested in the People of Puerto Rico. As was aptly stated in the comparable case of *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 295, 206 N. Y. S. 132 (1924):

> * * * The disuser, however, was a consequence, not a cause, of a loss of title by the plaintiff. The city of New York, in condemnation proceedings, seized the estate of the plaintiff. It also seized the rights of reverter belonging to the heirs at law of the grantors. The seizure was of the entire title, wherever resident, by a single act of appropriation. There was, therefore, no interval of time between the seizure of the plaintiff's estate and the seizure of the rights of the heirs at law during which

> there could have been a reverter of title to the heirs because of a church disuser of the premises necessarily consequent upon the seizure. At the moment of appropriation there had been no disuser. At that moment the estate then being enjoyed by the plaintiff might have continued forever. At that moment the rights of the heirs were mere possibilities. These rights possessed no value capable of estimate. All that was valuable was the estate of the plaintiff. Therefore, the money paid in by the city of New York should be paid to the plaintiff as for the only thing of value taken.

Petitioner argues with some emphasis (Pet. 16–17, 19–24) that a voluntary sale by the Casino to the United States for the same purposes for which the land was taken in condemnation would have been a breach of the conditions of the provisos and worked a reverter to the People of Puerto Rico. It then contends that condemnation is but one form of transfer of title, and that the result of the taking by the United States is the same as if there had been a voluntary sale. But this is clearly erroneous, since it is well settled that a taking by eminent domain which renders impossible the continuance of a use, the voluntary cessation of which would vest the future estate, is not a happening or occurrence which would cause a reversion. *First Reformed Dutch Church* v. *Croswell,* 210 App. Div. 294, 206 N. Y. S. 132; *In re Cooks' Will,* 243 App. Div. 706, 277 N. Y.

S. 26, affirmed per curiam 268 N. Y. 560; *United States* v. *1,119.15 Acres of Land,* 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land, etc.,* 46 F. Supp. 411 (W. D. S. C.); *United States* v. *16 Acres of Land, etc.,* 47 F. Supp. 603 (D. Mass.); *United States* v. *1,846.77 Acres of Land, etc.,* 48 F. Supp. 721 (W. D. Ky.); *Joint School District* v. *Bosch,* 219 Wis. 181. The only case apparently to the contrary is that of *Lancaster School District* v. *Lancaster County,* 295 Pa. 112, relied on by petitioner (Pet. 22–24).[7]

The Casino could not have prevented the condemnation of its property, and, at the time of taking, the estate then being enjoyed by the Casino might have continued forever. Even granting that a voluntary sale would have worked a reverter, there is no contention that the Casino contemplated selling its property to the United States, and the taking must be viewed as not having been sought by it.

Petitioner also contends (Pet. 24–26) that only the grantor or his heirs can take the benefit of the reversion upon breach of the condition. But the relevancy of this argument is not apparent. There was no breach of a condition which worked a reverter. On the contrary, when the Government took the property, it took all interests in it at the same time, including whatever interest the People of Puerto Rico might have.

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[7] See criticism of this case in 29 Col. Law Review 674.

Petitioner contends (Pet. 26–28) that the provisos in the Joint Resolution of 1936 compel the conclusion that the Casino has no financial interest in the condemnation award. It may be conceded that in a proper case the parties could agree in the instrument creating the estate that in event of a taking by eminent domain proceedings, one having a possibility of reverter would receive the award. A similar result has been reached in case of leases. I Nichols, Eminent Domain (2d ed.) p. 341. But there is no such agreement in the instant case. Even assuming that one having a fee simple title could have created, by an instrument of sale of part of his property, a possibility of reverter in the vendee as to that part of the property not sold, no such attempt was made here.

Petitioner's contention (Pet. 18, 27) that Section 9 of the Act of September 3, 1910 (providing that the conditions of that Act should "apply to any purchaser or successor of such grantee, whether by voluntary act or by judicial procedure"), requires that in event of eminent domain proceedings the People of Puerto Rico would be entitled to the award, is not sound. All the conditions expressed in that Act, as amended by the Act of February 21, 1912, were fulfilled by 1922, and Section 9 is therefore no longer in force.

Furthermore, these legislative provisions have been construed by the two lower courts against the petitioner, and, in the absence of a decision by a Puerto Rican court to the contrary, this Court

has indicated it will leave undisturbed such an interpretation of purely local law. *MacGregor* v. *State Mutual Co.*, 315 U. S. 280, 281. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 163.

2. Petitioner's second point that under the first proviso of the Joint Resolution of 1936 (App. 21) it had a presently existing active possessory interest in the land (Pet. 28–30), is admittedly not raised in its "answer" (R. 21–22) and was not briefed in the circuit court of appeals (App. 22–23), although it was raised on the oral argument there. It may be conceded that the People of Puerto Rico had an interest in the activities of the Casino, but it did not have a compensable property interest in the subject matter of the condemnation suit. As the circuit court of appeals pointed out (R. 48–49):

> The fact that the Casino had only the right to use the property for non-profit purposes does not affect the existence of its interest but only the value thereof * * *.

The same situation exists in the case of school boards, churches, and the like which hold a determinable fee in property as long as it is used for specified purposes. As has been pointed out (pp. 7–8), the overwhelming weight of authority gives the award in such instances to the owner of the determinable fee. The interest that the People of Puerto Rico had in the continued use of the Casino as a social center cannot be looked to as a property interest, which, if compensable,

would entitle it to share in the award. Nowhere in the petition or in petitioner's supporting brief is there any suggestion of how this "valuable, presently existing right" could be valued. Obviously, it would have no market value. As stated by the district court (R. 25), since "just compensation contemplates that the property owner be put in the same financial condition as before the taking, it would be clear that The People of Puerto Rico would receive exactly nothing."

Since the People of Puerto Rico had no compensable interest in the property condemned, they cannot be heard to question the approval of the stipulation by the trial court as to the fair market value of the property, and they have no right to share in the award.

CONCLUSION

The decision of the circuit court of appeals is correct, raises no new question of substance, and presents no conflict. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

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